**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 5557 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KALPANA @ KALIYA PHULSING PANDYA - Petitioner(s)**
**Versus**
**STATE OF GUJARAT THRO.THE DY.SECRETARY & 2 - Respondent(s)**

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**Appearance :**
MR NR KODEKAR for Petitioner,
MR AY KOGJE AGP Respondents.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 26/04/2007**

**ORAL JUDGMENT**

Heard learned advocate Shri N.R.Kodekar for the petitioner and learned AGP Shri Kogje for the respondents.

2. This petition has been filed by the detenu seeking to challenge an order of detention dated 1/12/2006 passed by the Commissioner of Police, Ahmedabad City ordering preventive detention of the petitioner in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as PASA.)

3. It appears that as many as six criminal cases are pending against the petitioner for having breached the provisions of the Bombay Prohibition Act which cases ranged from 15th June, 2005 to 23rd November, 2006. On the basis of involvement of the petitioner in these criminal cases and on the basis of materials collected by the police while investigating these case, the detaining authority came to the conclusion that the detention of the petitioner in exercise of powers under section 3(1) of PASA was necessary. The detaining authority was satisfied that it was necessary to do so in order to prevent the petitioner from indulging in the activities prejudicial to public order.

4. The petitioner has challenged this order on several grounds. It is pointed out that the criminal cases filed against the petitioner had no close proximity with the order of detention. The detaining authority had taken into consideration stale material and relied upon the same for passing the order of detention. It is pointed out that as many as three out of six cases relied upon by the detaining authority were filed against the petitioner in the year 2005 and the order of detention was passed in December, 2006. It is submitted that this would vitiate the order of detention.

4.1. It is further contented on behalf of the petitioner that the detenu made a representation against the order of detention on 22nd December, 2006. The representation came to be turned down by an order dated 28.12.2006 which was communicated to the petitioner only on 5.1.2007. It is thus submitted that there was considerable delay in disposal of the representation which would make the further detention inoperative.

5. Main thrust of the learned advocate for the petitioner was that the petitioner at the most can be stated to have been involved in certain offences of breach of the prohibition law and at the very worst the petitioner may be categorized as bootlegger. It is further submitted that simple cases of bootlegging however, would not permit the detaining authority to form an opinion that the activities of the petitioner

are prejudicial to the public order. It is submitted that what is necessary for ordering preventing detention is the satisfaction of the authority that it is essential to do so to prevent the detenu from indulging into activities prejudicial to public order and not simple law and order.

5.1. Reliance in this regard was placed on the decision in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors. reported in 2000(1) GLH 393**, wherein the Division Bench placing reliance on an earlier Division Bench decision of this Court in the case of Shamjibhai Manjibhai Patel v. Commissioner of Police, City of Ahmedabad and Anr reported in 1992(2) GLR 1360, observed that cases against the detenu have already been registered and the case would fall under the maintenance of "law and order and not public order". The Division Bench, therefore, opined that the subjective satisfaction arrived at by the detaining authority was illegal since the detention could have been passed by the authority for maintenance of public order. On this basis, the Division Bench was pleased to quash the order of detention.

5.2. Reliance was placed on the decision of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr. reported in AIR 1989 SCC 491,** wherein the Apex Court observed that, may be that the detenu is a bootlegger but only on that count he could not be preventively detained unless his

activities affect adversely or is likely to affect adversely the maintenance of public order. In the said case, it was alleged that not only the detenu was a bootlegger, he was indulging in use of force and violence, he was involved in illegal sale of liquor and created an atmosphere of fear and terror by beating innocent citizens. The Apex Court observed that apart from some minor incidents of beating by the detenu the witnesses alleged that the detenu was high handed and fierce by nature. It was held that the detention order cannot be upheld as this would not be a case of adversely affecting public order.

5.3. Reliance was also placed on the decision of the learned Single Judge of this Court in the case of **Rajubhai Pratapbhai Panpatil vs. Commissioner of Police, Surat City and Ors. reported in 2006(1) G.L.H. 382**, wherein the learned Judge found that mere registration of prohibition offence is not enough to arrive at the subjective satisfaction that the activities of the detenu are prejudicial to maintenance of public order.

5.4. Reliance was placed on the decision of the Apex Court in the case of **District Collector, Ananthapur and Anr. v. V.Laxmanna reported in (2005) 3 SCCC 663**, wherein the Apex Court observed that mere dealing with arrack or transport or sale thereof by itself would not become an activity prejudicial to the maintenance of pubic order and before ordering detention the authority must be satisfied on material

available to it that the arrack dealt with by the detenu is dangerous to public health.

6. On the other hand learned AGP Shri Kogje opposed the petition and submitted that as many as six cases of bootlegging have been filed against the petitioner in the recent past. In addition thereto the authority also has taken into consideration the statements recorded by the police in course of investigation of such offences.

6.1. He has placed reliance on the decision of the learned Single Judge of this Court in the case of **Vanrajsinh Danubha Jadeja v. State of Gujarat & Ors. reported in 2000(1) GCD 40 (Guj.)**, wherein the Court was pleased to uphold an order of detention, wherein the detenu was involved in large number of cases of bootlegging. The learned Judge found that the activities were prejudicial to the maintenance of public order.

7. Having heard learned advocates for the parties, I find that the contention raised by the learned advocate for the petitioner is required to be upheld. In the present case except for six cases of bootlegging filed against the petitioner there is no further material permitting the detaining authority to come to the conclusion that her activities were prejudicial to the interest of public order. As noted earlier three out of these six cases were filed in the year 2005, whereas the order of detention was

passed in the December, 2006. Quite apart from the time gap in taking into consideration the stale cases, I find that as observed by the Division Bench of this Court in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors (supra)** mere involvement of a detenu in activities of bootlegging *per se* would not permit the authority to come to a conclusion that her activities were prejudicial to the public order. This view has also been followed subsequently and is also supported by the decision of the Apex Court in the case of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr.(supra)**.

8. In the result, I find that the satisfaction arrived at by the detaining authority is not sustainable. The order of detention, therefore fails and is hereby quashed. Rule is made absolute. No order as to costs. Direct service is permitted.

9. Since the petition is being allowed and the detention order is quashed, it is further directed that the detenu shall be released forthwith if there is no other detention or criminal case against him.

**[AKIL KURESHI, J.]**

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